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APPEAL BRIEF

U.S. SERIAL NO.:   09/848,572
FILING DATE: May 3, 2001
INVENTOR: Bates et al.
EXAMINER: Ronald Laneau
GROUP ART UNIT: 3627
CONFIRMATION NO.: 6826

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:
Cary Lee Bates et al.

Serial No.: 09/848,572

Confirmation No.: 6826

Filed: May 3, 2001

For: Systems and Methods for
Operating Vending Machines

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Group Art Unit: 3627

Examiner: Ronald Laneau

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPEAL BRIEF

Applicants submit this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 3627 dated April 21, 2005, finally rejecting claims 1-8, 10, 12-21, 25-29 and 42-46. The final rejection of claims 1-8, 10, 12-16, 20-21, 25-29 and 42-46 is appealed. This Appeal Brief is believed to be timely since facsimile transmitted by the due date of September 1, 2005, as set by mailing a Notice of Appeal on July 1, 2005. Please charge the fee of $500.00 for filing this brief to Deposit Account No. 09-0465.

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Real Party In Interest

The present application has been assigned to International Business Machines Corporation, Armonk, New York.

Related Appeals and Interferences

Applicant asserts that no other appeals or interferences are known to the Applicant, the Applicant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1-8, 10, 12-16, 20-21, 25-29 and 42-46 are pending in the application. Claims 1-41 were originally presented in the application. Claims 9, 11, 17-19, 22-24 and 30-41 have been canceled without prejudice. Claims 1-8, 10, 12-16, 20-21, 25-29 and 42-46 stand finally rejected as discussed below. The final rejections of claims 1-8, 10, 12-16, 20-21, 25-29 and 42-46 are appealed. The pending claims are shown in the attached Claims Appendix.

Status of Amendments

All claim amendments have been entered by the Examiner, including amendments to the claims proposed after the final rejection.

Summary of Claimed Subject Matter

Embodiments of the invention provide a method and system for operating a reservation control system for reserving items dispensed by vending machines networked to the reservation control system. *See* Paragraph 0010, 0011, 0047; Figure 2, Items 200, 202, 103, 104_{1-N}. In one embodiment, a reservation request for an item is received from a requesting computer. *See* Paragraph 0071, 0072, 0099; Figure 9, Items 902_{1-5}, 916, 920; Figure 17, Item 1710. A determination is made of whether the item is available at a vending machine. *See* Paragraph 0100; Figure 17, Item 1720.

If the item is available, the item is reserved to ensure availability of the item at the vending machine in satisfaction of the reservation request. *See* Paragraph 0082, 0101; Figure 12, Item 950; Figure 17, Item 1730. Reserving the item includes placing a hold on the item at the vending machine to prevent the item from being purchased by any person other than a person for whom the reservation request is made. *See* Paragraph 0071; Figure 12, Item 950.

In one embodiment (*See, e.g.,* Claim 1), an authorized request is received at the vending machine to dispense the item reserved for the person for whom the reservation request was made. *See* Paragraph 0106; Figure 18, Item 1825. In response to receiving the request to dispense the item, a service charge for the item is calculated according to a length of time for which the item was reserved. *See* Paragraph 0082, 0087-0089, 0107; Figure 18, Item 1840.

In one embodiment (*See, e.g.,* Claim 45), a maximum hold duration for which the item will be reserved is calculated, and after which the reservation of the item expires. *See* Paragraph 0087-0089, 0100-0101; Figure 17, Items 1735, 1730. Upon detecting expiration of the maximum hold duration, a penalty fee is charged to the person for whom the reservation request was made if the item had not yet been retrieved when the maximum hold duration expires. *See* Paragraph 0082, 0089, 0101, 0111; Figure 19, Items 1915, 1935.

Grounds of Rejection to be Reviewed on Appeal

Claims 1-8, 10, 12-21, 25-29 and 42-46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Tedesco et al.* (US 6,085,888, hereinafter *Tedesco*) in view of *Freeney, Jr.* (US 6,490,443, hereinafter *Freeney*) and further in view of Japanese patent (JP411039547A) by *Koji* (hereinafter *Koji*).

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ARGUMENTS

Obviousness of Claims 1-8, 10, 12-21, 25-29 and 42-46 over *Tedesco* in view of *Freeney* and further In view of *Koji*.

The Applicable Law

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *See* MPEP § 2142. To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP § 2143. The present rejection fails to establish at least the first and third criterion.

The References

Tedesco is directed to a method and apparatus for registering a subscription to purchase a plurality of items dispensed by a vending machine. *See* Col. 2, Line 62 – Col. 3, Line 4. The apparatus receives an indication of payment for the subscription and a request to register the subscription. *Id.* During the registration process, the apparatus determines a redemption code that may be used to redeem items associated with the subscription. *Id.* The apparatus then stores subscription registration data including the determined redemption code. *Id.*

Freeney is directed to a master proximity signaling unit MPSU. *See* Col. 2, Lines 21-46. The MPSU may provide an alternative to paying for wireless communication devices or services, such as a cell phone or pager. *Id.* The unit may also provide an alternative to credit cards. *Id.* The unit can communicate wirelessly with a proximity service provider machine. *Id.* For example, the proximity service provider machine can be a vending machine. *See* Col. 32, Lines 15-23. The MPSU may be used to pay at the vending machine. *See* Col. 30, Lines 35-64. Also, each of the proximity service

provider machines may be networked with a proximity authorization unit and with each other. *See* Col. 32, Line 24-35.

Koji is directed to terminal which allows a user to reserve an article. *See* Abstract, Figure 1. The user may prepay at the terminal to reserve the article using a card. *Id.* Reservation information regarding the article is transmitted to a vending machine. *Id.* The card may also be used to redeem the reserved article at the vending machine. *Id.*

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Lack of Motivation to Combine

</div>

The Examiner rejects the pending claims under *Tedesco* in view of *Freeney* and further in view of *Koji*. Applicants respectfully submit there is no motivation to combine the references in the manner suggested by the Examiner

The Examiner's Argument

The Examiner states "Tedesco et al do not teach a vending machine network but Freeny, [sic] Jr. teaches a computer network that includes vending machines (see Fig. 7), wherein a user can use a computer or wireless telephone to place a vending machine order (see, for example, col. 2, lines 3-46)." *See* Examiner's *Final Office Action* dated April 21, 2005 at Pg. 3. The Examiner also states "It would have been obvious to employ the teachings of Freeny, [sic] Jr. with the invention of Tedesco et al to allow users to employ a network to allow users to use multiple vending machines and to place an order through a computer or wireless phone for convenience." *Id.*

Applicants' Response to the Examiner's Argument

Applicants respectfully submit that the Examiner errs in combining the references because there is no motivation to combine the references in the manner suggested by the Examiner. *Freeney* teaches short-range communications that can occur within a predetermined distance between a wireless device and a vending machine. *See, e.g.,* Col. 30, lines 2-11; and Figure 28. Thus, the vending machine is only operable by the user of a wireless device when the user is within the predetermined distance. *See, e.g.,* Figure 28. This distance is necessarily one allowing the user immediate access to the

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vending machine because the item(s) purchased and dispensed must be immediately retrieved by the user. In fact, the purpose of the *Freeney* invention is only to provide a means of payment for the vending machine items. *See, e.g.*, Col. 30, lines 56-60. The user must still have physical access to the vending machine to make the item selections using the physical interface (e.g., keypad) of the vending machine.

Accordingly, not only does *Freeney* not teach reserving an item at a vending machine (as the Examiner concedes), *Freeney* teaches away from any suggestion of reservation because reservation is necessarily counter to immediate purchase and retrieval at the vending machine. That is, since the user of *Freeney* is physically at the vending machine making the purchase and expecting the item to be dispensed, a reservation of the item is nonsensical because the user would then not receive the purchased item, which the user is expecting to be immediately dispensed from the machine. Therefore, a person skilled in the art would not be motivated to combine *Freeney* with the other cited references as suggested by the Examiner. Accordingly, Applicants respectfully request that the rejection be reversed.

All Claim Limitations of Independent Claims 1, 25, 42 and the Claims that Depend Therefrom are Not Taught

Independent claims 1, 25, 42, and the claims that depend therefrom, each describe calculating a service charge based on how long an item was reserved prior to being picked up by a customer. Applicants respectfully submit that the cited references, alone or in combination, do not teach or suggest the provided claim limitations.

Examiners' Argument

Examiner cites *Tedesco* at column 8, lines 3-17 and column 9, lines 34-50 for the proposition that an item is reserved. *See* Examiner's *Final Office Action* dated April 21, 2005 at Pg. 2. The Examiner cites *Tedesco*, Figure 4, as teaching "calculating a service charge based on how long an item was reserved prior to being picked up by a customer". *See* Examiner's *Final Office Action* dated April 21, 2005 at Pgs. 2-3.

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Applicants' Response

First, Applicants respectfully submit that *Tedesco* does not teach reserving an item in a vending machine. Because *Tedesco* does not teach reserving an item, then *Tedesco* cannot teach calculating a service charge on the basis of how long an item was reserved for a purchaser before being dispensed to the purchaser, as described below. Also, because the subscription price in *Tedesco* is determined at the time a subscription is purchased, *Tedesco* does not calculate a service charge on the basis of how long an item was reserved for a purchaser before being dispensed to the purchaser.

1. *Tedesco* does not teach reserving an item at a vending machine.

Examiner cites *Tedesco* at column 8, lines 3-17 and column 9, lines 34-50 for the proposition that an item is reserved. *See* Examiner's *Final Office Action* dated April 21, 2005 at Pg. 2. Applicants respectfully submit that the cited sections of *Tedesco* show that in no sense of the word has an item been reserved. Column 8, lines 3-17 and column 9, lines 34-50 both demonstrate that *Tedesco* uses forecasted demand analysis to determine the "likely" number of items to be redeemed before the next restocking. Column 9, lines 34-50, which the Examiner relies on, specifically states that if the demand for a product has been higher than estimated, the machine may be out of inventory when a purchaser attempts to make a purchase, in which case "CPU 126 causes display 126 [*sic*] to output a message indicating "insufficient inventory". Col. 9, lines 47-48.

Even where the user of *Tedesco* has subscribed to the item, the item may still be out of stock as is evidenced by Figure 9 of *Tedesco* that describes the subscription redemption process. Specifically, step 912 of Figure 9 is described as including the step of "verifying that vending machine 100 has not sold out of the product associated with the received redemption code." Column 8, lines 46-47. If the item were "held" for the subscriber, then it could not be sold out. Therefore, it is clear that in no sense does *Tedesco* hold a particular item for a particular user, as claimed.

In contrast, the present claims specifically recite that the item is <u>held</u> for the purchaser making the reservation. Therefore, so long as the reservation of the item is maintained, <u>the item cannot be out of stock</u> when the purchaser comes to retrieve it.

2. Because *Tedesco* does not teach reserving an item at a vending machine, *Tedesco* does not teach the claimed subject matter.

From the discussion above, it follows, therefore, that Figure 4 of *Tedesco*, as cited by the Examiner, cannot, and does not, teach "calculating a service charge on the basis of how long an item is reserved prior to pick up". In other words, if *Tedesco* does not teach reserving an item, then it cannot teach calculating a fee on the basis of reserving an item. In fact, Figure 4 is of a table containing the terms of a subscription. The subscription duration field 416, which the Examiner apparently refers to, contains "the amount of time for which the subscription is valid" (col. 5, 60-62), not a length of time an item was reserved. Accordingly, *Tedesco* does not teach "calculating a service charge on the basis of how long an item is reserved prior to pick up".

3. Because the subscription price in *Tedesco* is fully determined at the time a subscription is purchased *Tedesco* does not teach the claimed subject matter.

As stated above, Figure 4, which is cited by the Examiner as teaching "calculating a service charge on the basis of how long an item was reserved for a purchaser before being dispensed to the purchaser" depicts a table containing the terms of a subscription. *See* Col. 5, Lines 52-53. The subscription duration field 416 depicted in Figure 4 is used to calculate an expiration time/date after which the subscription is no longer valid. *See* Col. 5, Lines 60-62. Further, the price of the subscription (contained in the subscription price field 414) is <u>predetermined</u> and charged to the user <u>at the time of purchase, and not calculated on the basis of the length of reservation</u>. This is described by *Tedesco* with respect to Figure 7, which describes the subscription registration process. *See* Col. 66, Lines 52-54.

In particular, *Tedesco* states that at step 719 the subscription expiration date is calculated using <u>the current system date/time</u> and the subscription duration stored in the field 416 of the subscription option table record associated with the selected

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subscription. Col. 7, lines 32-35. Since step 719 is performed at the subscription registration process, using the current time and the subscription duration field 416, it follows that *Tedesco* does not teach calculating a service charge on the basis of how long an item was reserved for a purchaser before being dispensed to the purchaser, which can only be done upon dispensation of the item. Accordingly, *Tedesco* does not teach the claimed subject matter as asserted by the Examiner.

All Claim Limitations of Independent Claim 45 and the Claims that Depend Therefrom are Not Taught

Independent claim 45 describes "calculating a maximum hold duration for which the item will be reserved, and after which the reservation of the item expires" and "upon detecting expiration of the maximum hold duration, charging a penalty fee to the person for whom the reservation request was made if the item had not yet been retrieved when the maximum hold duration expires." Applicants respectfully submit that the cited references, alone or in combination, do not teach or suggest the provided claim limitations.

Examiner's Argument

Claims 43-46 were added as a new claim in Applicants' *Response to Office Action* dated February 4, 2005. The Examiner's *Final Office Action* dated April 21, 2005 did not provide a substantive rejection of the added claims. Accordingly, in a telephonic interview with the Examiner, Applicants noted that no substantive rejection was provided. See Applicants' *Response to Final Office Action* dated June 1, 2005, at Pages 9-10. However, in Examiner's *Advisory Action* of July 1, 2005, Examiner states that the added claims were addressed in the section 2 portion of Examiner's final rejection.

Applicants' Response

A careful review of the Section 2 portion of Examiner's *Final Office Action* dated April 21, 2005 at Pages 2-3 shows that the section does not include the language provided above with respect to Claim 45. Indeed, the section cited by the Examiner

appears to be identical Section 3 of Examiner's *Office Action* dated January 12, 2005 at Pages 2-4, the contents of which were created *before* Applicants added the new claims 43-46. Accordingly, Examiner has not provided a substantive basis for rejecting the added claims.

Regardless, it appears that Examiner mistakenly believes the added claims to be identical in scope to claims which were already pending in the application. Specifically, Examiner appears to believe that the scope of the added claims is the same as the scope of, for example, Claim 1, which was rejected by the Examiner using Figure 4 of *Tedesco*. At least with respect to Claim 45 and the claims that depend therefrom, Applicants stress that the added claims are not identical in scope to claims which were previously pending in the application.

For the reasons stated above, Applicants presume that the Examiner believes Figure 4 of *Tedesco* also teaches the subject matter of Claim 45. However, Applicants respectfully submit that Figure 4 of *Tedesco* does not teach the claimed subject matter. Specifically, as stated above, *Tedesco* teaches the price of the subscription (contained in the subscription price field 414) is predetermined and charged to the user at the time of purchase, and not calculated on the basis of the length of reservation. *See* Col. 66, Lines 52-54; Figure 7, Item 712. Accordingly, because the entire cost in *Tedesco* is charged at the time of purchase, *Tedesco* does not describe "charging a penalty fee to the person for whom the reservation request was made if the item had not yet been retrieved when the maximum hold duration expires." Indeed, in the context of *Tedesco*, charging a penalty fee to a user which had already fully paid the subscription price of the items being subscribed to would not make sense. Accordingly, a textual search of *Tedesco* reveals that *Tedesco* does not mention a "penalty" or "penalty fee". Therefore, *Tedesco* does not teach the claimed subject matter as asserted by the Examiner.

In summary, as described above with respect to each of the independent claims and the claims which depend therefrom, the references cited by the Examiner, alone or in combination, do not teach, show, or suggest all claim limitations. Accordingly, Examiner has failed to satisfy at least the third criterion of the *prima facie* case of obviousness. Furthermore, as also described above, there is no motivation to combine

the references in the manner suggested by the Examiner. Accordingly, Examiner has failed to satisfy at least the first criterion of the *prima facie* case of obviousness.
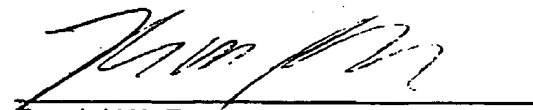
Accordingly, Applicants respectfully request that the rejection be reversed.

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CONCLUSION

The Examiner errs in finding that claims 1-8, 10, 12-21, 25-29 and 42-46 are unpatentable over *Tedesco* in view of *Freeney* and further in view of *Koji* under 35 U.S.C. § 103(a). Withdrawal of the rejection and allowance of all claims is respectfully requested.

Respectfully submitted,

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CLAIMS APPENDIX

1.   (Previously Presented)   A method of operating a reservation control system for reserving items dispensed by vending machines networked to the reservation control system, comprising:

receiving, from a requesting computer, a reservation request for an item;

determining whether the item is available at a vending machine;

if the item is available, reserving the item to ensure availability of the item at the vending machine in satisfaction of the reservation request, wherein reserving the item comprises placing a hold on the item at the vending machine to prevent the item from being purchased by any person other than a person for whom the reservation request is made; and

receiving an authorized request at the vending machine to dispense the item reserved for the person for whom the reservation request was made; and

in response to receiving the request to dispense the item, calculating a service charge for the item according to a length of time for which the item was reserved.

2.   (Original)   The method of claim 1, further comprising, if the item is available, transmitting a message indicating that the reservation request has been accepted, whereby the item is reserved for a future pickup.

3.   (Original)   The method of claim 1, wherein the reservation control system is a receiving vending machine.

4.   (Original)   The method of claim 1, wherein the requesting computer is a requesting vending machine.

5.   (Original)   The method of claim 1, wherein receiving a reservation request comprises receiving an item identifier and an item location identifier.

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6. (Original) The method of claim 1, wherein the reservation request is received from a wireless telephone.

7. (Original) The method of claim 1, wherein the vending machine is connected to a network of vending machines.

8. (Original) The method of claim 1, wherein determining whether the item is available at the vending machine comprises accessing a product data structure containing a value indicative of a number of the item available at the vending machine, wherein the data structure is periodically updated with information received from the vending machine.

9. (Canceled)

10. (Original) The method of claim 1, further comprising, upon determining that the item has been purchased from the vending machine, removing an associated reservation request record from a reservation data structure.

11. (Canceled)

12. (Original) The method of claim 1, wherein reserving the item the item comprises assigning a confirmation number to the reservation request, wherein the confirmation number is used to retrieve the item from the vending machine at future time.

13. (Original) The method of claim 12, further comprising, if the item is available, transmitting to the requesting computer a message containing the confirmation number.

14. (Original) The method of claim 1, wherein reserving the item the item comprises storing an item identifier and a vending machine location identifier and assigning a confirmation number to the reservation request.

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15. (Original) The method of claim 14, further comprising, if the item is available, transmitting a message containing the confirmation number.

16. (Original) The method of claim 1, further comprising receiving an electronic input indicative of a selection to retrieve the item at the vending machine.

17-19. (Canceled)

20. (Previously Presented) The method of claim 1, further comprising:
charging the service charge to a purchaser of the item.

21. (Original) The method of claim 20, wherein the service charge increases with an increasing reservation time.

22-24. (Cancel)

25. (Previously Presented) A reservation system for reserving items dispensed by vending machines, comprising:
a memory containing a reservation program;
a first network interface to support a first network connection with a client computer issuing a reservation request for a vending machine item;
a second network interface to support a second network connection with at least one vending machine; and
a processor which, when configured by the reservation program:
determines an availability of the vending machine item at the at least one vending machine;
if the vending machine item is available, reserves the item to ensure availability of the item in satisfaction of the reservation request, wherein reserving the item comprises placing a hold on the item to prevent the item from being

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purchased by any person other than a person for whom the reservation request
is made; and

upon receiving an authorized request at the vending machine to dispense
the item reserved for the person for whom the reservation request was made,
calculates a service charge for the item according to a length of time for which
the item was reserved.

26.   (Original)   The reservation system of claim 25, wherein the first network
interface and the second network interface are the same.

27.   (Original)   The reservation system of claim 25, wherein the processor is
further configured to issue a confirmation number to the client computer if the item is
available.

28.   (Original)   The reservation system of claim 25, wherein the processor
determines the availability of the vending machine item by accessing a reservation data
structure contained in the memory and wherein the reservation data structure is
periodically updated with information received from the vending machine.

29.   (Original)   The reservation system of claim 25, wherein the reservation system
is a vending machine.

30-41.   (Cancelled)

42.   (Previously Presented)   A method of operating a reservation control system
for reserving items dispensed by vending machines networked to the reservation control
system, comprising:

receiving, from a requesting computer, a reservation request for an item;

determining whether the item is available at a first vending machine;

if the item is available at the first vending machine, reserving the item to ensure
availability of the item in satisfaction of the reservation request, wherein reserving the

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item comprises placing a hold on the item to prevent the item from being purchased by any person other than a person for whom the reservation request is made;

receiving a request input to a second vending machine to dispense the item, wherein the second vending machine is different from the first vending machine; and

if the item is available at the second vending machine:

calculating a service charge for the item according to a length of time for which the item was reserved;

charging the calculated service charge to a purchaser of the item; and

issuing an instruction to dispense the item from the second vending machine and updating a data structure to indicate that the item has been dispensed.

43. (Previously Presented) The method of claim 1, further comprising:

calculating a maximum hold duration for which the item will be reserved, and after which the reservation of the item expires; and

upon detecting expiration of the maximum hold duration, charging a penalty fee to the person for whom the reservation request was made if the item had not yet been retrieved when the maximum hold duration expires.

44. (Previously Presented) The method of claim 42, further comprising:

calculating a maximum hold duration for which the item will be reserved, and after which the reservation of the item expires; and

upon detecting expiration of the maximum hold duration, charging a penalty fee to the person for whom the reservation request was made if the item had not yet been retrieved when the maximum hold duration expires.

45. (Previously Presented) A reservation system for reserving items dispensed by vending machines, comprising:

a memory containing a reservation program;

a first network interface to support a first network connection with a client computer issuing a reservation request for a vending machine item;

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a second network interface to support a second network connection with at least one vending machine; and

a processor which, when configured by the reservation program performs processing, comprising:

upon receiving the reservation request, determining an availability of the vending machine item at the at least one vending machine;

if the vending machine item is available, reserving the item to ensure availability of the item in satisfaction of the reservation request, wherein reserving the item comprises placing a hold on the item to prevent the item from being purchased by any person other than a person for whom the reservation request is made;

calculating a maximum hold duration for which the item will be reserved, and after which the reservation of the item expires; and

upon detecting expiration of the maximum hold duration, charging a penalty fee to the person for whom the reservation request was made if the item had not yet been retrieved when the maximum hold duration expires.

46. (Previously Presented) The apparatus of claim 45, further comprising upon receiving an authorized request at the vending machine to dispense the item reserved for the person for whom the reservation request was made, calculating, by the processor, a service charge for the item according to a length of time for which the item was reserved.

RELATED PROCEEDINGS APPENDIX

No copies of decisions rendered by a court or the Board in the related appeal or interference listed on page 4 of this Brief are included as there have been no decisions by the court or the Board in the related appeal or interference listed on page 4 of this Brief.

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